

Steven M. Bessette et al.  
Appl. No. 09/362,189  
August 31, 2004

Atty. Docket: 4380-61

### REMARKS/ARGUMENTS

Claims 17 and 54 are pending. In an effort to advance prosecution, claims 17 and 54 are amended to encompass infringing subject matter and claims 53 and 55 are canceled. No new matter has been added by these amendments and Applicants do not acquiesce to the propriety of any of the Examiner's current or previous rejections and do not disclaim any subject matter to which Applicants are entitled. *Cf Warner Jenkinson Co. v. Hilton-Davis Chem. Co.*, 41 U.S.P.Q.2d 1865 (U.S. 1997). Further, Applicants reserve the right to prosecute the subject matter of any canceled claim in one or more continuation, continuation-in-part, or divisional applications.

Applicants respectfully submit that entry of the above amendments is proper under 37 C.F.R. § 1.116 because the amendments: (a) place the application in condition for allowance (for the reasons discussed herein); (b) do not raise any new issues requiring further search and/or consideration (since the amendments amplify issues previously discussed throughout the prosecution); (c) do not present any additional claims without canceling a corresponding number of finally rejected claims; and (d) place the application in better form for appeal, should an appeal be necessary. The above amendment(s) was not earlier made because the issues raised in the final rejection were not previously of record. Thus, entry is respectfully requested.

### REJECTION UNDER 35 U.S.C. § 112, FIRST PARAGRAPH

The Office Action rejects claims 17, 53, 54 and 55 under 35 U.S.C. § 112 as allegedly failing to comply with the written description requirement. Solely in an effort to advance prosecution, claims 17 and 54 were amended to remove the exclusionary phrase "devoid of

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piperonyl butoxide" and claims 53 and 55 were canceled, thereby rendering this rejection moot.  
Thus, reconsideration and withdrawal of this rejection are respectfully requested.

### CONCLUSION


If anything further could be done to place the above-captioned patent application in better condition for allowance (i.e., via Examiner's Amendment), then please contact the undersigned attorney at the telephone number listed below.

Please grant any extension(s) of time deemed necessary for entry of this communication.  
The Commissioner is hereby authorized to charge any deficiency in the fee(s) filed, or asserted to be filed, or which should have been filed herewith (or with any paper filed hereafter) to Deposit Account No. 14-1140. Please credit any overpayment of fees to such Deposit Account.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By:

  
Willem F. Gadiano  
Reg. No. 37,136

WFG:ewm  
1100 North Glebe Road, 8th Floor  
Arlington, VA 22201-4714  
Telephone: (703) 816-4000  
Facsimile: (703) 816-4100

#### CERTIFICATE OF FACSIMILE TRANSMISSION

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Date:

August 21, 2004

By:

  
Willem F. Gadiano, Reg. No. 37,136

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